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Supreme Court, U.S.
FILED
FEB 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

STATE OF OREGON,
Plaintiff-Appellee,

v.

BOYD R. BATY,
Defendant-Appellant.

On Appeal from the
Supreme Court of the State of Oregon

JURISDICTIONAL STATEMENT

BOYD R. BATY
19197 S. Molalla Ave. #161
Oregon City, OR 97045
(503) 653-5478 Appellant in Pro Per

DAVID FROHNMEYER (71001)
Attorney General
VIRGINIA L. LINDER (80294)
Solicitor General
THOMAS H. DENNEY (66034)
Assistant Attorney General
400 Justice Building
Salem, OR 97310
(503) 378-4402 Attorneys for Appellee

QUESTIONS PRESENTED

1. Did the trial court violate a law of the United States by flying a purported United States flag not conforming to the requirements of 4 USC Ch. 1, §§ 1-3?

2. Did the trial court enforce an Oregon statute, void on its face or in its operation as a Bill of Attainder?

3. Did the trial court err in refusing to take judicial notice of the class of citizenship possessed by appellant?

4. Does the Oregon Motor Vehicle Code violate certain prohibitions of the United States Constitution, when applied to one who wishes to retain his inalienable rights of liberty, that is, one who refuses to voluntarily acquiesce to the police power exercised through this legislation?

5. If a state court depends upon a Bill of Attainder enforced by a complaint filed therein to exercise personal jurisdiction

over a defendant, is personal jurisdiction lawfully obtained or maitained by the service of process?

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OPINIONS BELOW

Although no opinions were given by either the Oregon Court of Appeals or the Oregon Supreme Court, this case can be found reported as:

State v. Baty (A37864), 80 Or App 153, 720 P2d 415, *rev den* ___ Or ___, *recon den* ___ Or ___ (1986).

GROUNDS FOR INVOKING JURISDICTION

Nature of Proceding

This is a traffic case, presumably criminal admiralty, wherein the appellant, Boyd R. Baty, allegedly subject to a decree of suspension of right to apply for a driver's license, was charged by Uniform Traffic Citation and Complaint with Driving While Suspended former ORS 487.560), alleging in pertinent part,

> "That on the 18th day of Jan, 1985 at 3:54 o'clock p.m. * * * Baty, Boyd Robert * * * did unlawfully operate vehicle, Lic. No. Baracuda At Law * * * on Premises open to the public, to wit: * * * Harrison at or near 2300 Blk located in [City of Milwaukie, Clackamas County, Oregon], and did then and there commit the following * * * traffic crime: * * * no license * * * operator * * * suspended ** * in violation of state statute."

Date of Judgment to be Reviewed

The Supreme Court of Oregon denied review of the judgment of the Court of Appeals dated June 25, 1986, by its order dated September 30, 1986 (App-4).

Date of Order on Rehearing

Rehearing (Reconsideration) was petitioned for on October 20, 1986, and denied by the Oregon Supreme Court on November 4, 1986 (App-5). The judgment of the Oregon Court of Appeals was entered in the trial court on November 4, 1986 (App-6), and recalled for the purpose of this appeal, at the request of appellant, by order of the Oregon Court of Appeals dated November 21, 1986 (App-7).

Date of Notice of Appeal

Notice of Appeal to the United States Supreme Court was filed with the Oregon Court of Appeals on November 18, 1986 (App-8), and a copy thereof was filed with the Oregon State District Court for the County of Clackamas (the trial court having the record) on November 18, 1986 (App-12).

Statutory Provision

Appellant depends upon 28 USC § 1257(2)

to confer jurisdiction of this appeal upon the United States Supreme Court.

28 USC § 1257(2) provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity." 28 USC 1257

In this case, the judgment of the highest court in the State of Oregon is final. The finality of the state court's opinion is indicated by the fact that the Oregon Court of Appeals remanded its judgment to the trial court, when nothing is left for the trial court to do except to execute the judgment and enter it upon the trial court record. Catlin v. United States, 524 US 229, 233 (1945).

CONSTITUTIONAL PROVISIONS INVOLVED

The Preamble of the United States Constitution comes into play in this appeal. The words of the Preamble are clear and prevade over the intent and purpose of the Constitution in its entirety.

> "WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." Preamble, United States Constitution (1787)

Article I, section 10, clause 1 of the United States Constitution enjoins the state of Oregon in the following language:

> "*No state shall* enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; *pass any Bill of Attainder*, ex post facto Law, or Law impairing the Obligations of Contracts, or grant any Title of Nobility." Art I § 10 cl 1, United States Constitution (1787)

This provision also applies to lesser

forms of the Bill of Attainder known to the law as Bills of Pains and Penalties.

As can be seen from 28 USC § 1257(2) the Congress of the United States has not placed any limitation on the appellate jurisdiction of the United States Supreme Court in this respect, and this court is free to exercise jurisdiction conferred by the following provisions of the United States Constitution:

> "The judicial power of the United States shall be vested in one Supreme Court * * *." Art III § 1, United States Constitution (1787)
>
> "The judicial power shall extend to all cases, in law and equity, arising under this constitution, * * *." Art III § 2 cl 1, United States Constitution (1787)
>
> "* * * In all other cases before mentioned, the Supreme Ccurt shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make." Art III § 2 cl 2, United States Constitution (1787)

Where one state statute, or several state statutes operating in conjunction, violate

the prohibitions of the United States Constitution the supremecy clause makes the law of the state and judgments made thereunder void.

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land: and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Art VI cl 2, United States Constitution (1787)

The 9th Article of the Bill of Rights shows that the rights violated by the state by enactments prohibited in the United States Constitution need not be enumerated to exist.

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Art 9, Bill of Rights of the United States Constitution (1791)

The 10th Article of the Bill of Rights of the United States Constitution states:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are

reserved to the States respectively, or to the people." Art 10, Bill of Rights of the U.S. Constitution (1791)

Where the United States Constitution has prohibited the state from exercising a power and where the United States is not vested with that power, it is clear that any attempt to exercise a power prohibited will inherently violate rights of a citizen protected by the prohibitions of the United States Constitution.

STATEMENT OF THE CASE

In this case, appellant was charged with criminal violation of the Oregon Motor Vehicle Code. Appellant was charged former ORS 487.560, *supra* at page 2.

Appellant contends that he cannot be held liable under this Oregon statute without violation being done to the prohibitions of the United States Constitution, and therefore the trial court had no legal right to exercise personal jurisdiction over appellant under ORS 487.560.

Appellant notified the Division of Motor Vehicles (DMV) for the State of Oregon, by mailing certified mail #P22 6142093, sent on October 6, 1983, an affidavit that appellant was forthwith revoking the Oregon Drivers License #3142359, which had been issued in appellant's name and was of record with the DMV. Said revocation was made for cause, stated in the aforementioned affidavit of revocation dated

August 4, 1983, which was accomplished prior to appellant's turning of legal age (21 yrs). This is in evidence in the trial court file.

Said license was returned to the DMV field office in Gladstone, Oregon, and a receipt of said return was rendered to appellant. This was accomplished by appellant on October 4, 1983.

A subsequent affidavit of revocation was made for cause, dated August 5, 1985, subscribed and affirmed *nunc pro tunc* October 14, 1984, by mailing to the DMV by certified mail #P616 656 060, sent on August 5, 1985, which reaffirmed appellant's position of not licensing the State of Oregon through a drivers license.

On March 12, 1984, the Oregon Department of Transportation/Motor Vehicles Division, through its Assistant Administrator Anthony P. DeLorenzo, issued a Notice of Suspension against appellant, suspending

appellant's right to apply for the Drivers License #3142359, which Appellant had previously revoked for cause and returned as aforementioned.

Appellant was charged with this offense by way of a Uniform Traffic Citation and Complaint. The summons noted an appearance date of January 31, 1985. Appellant, holding to the contention that he was not liable to the Oregon statute under which he was charged, and that the trial court therefore, could not lawfully acquire personal jurisdiction by service of the summons, did not appear on the date noted in the summons. Subsequently, the trial court issued a Bench Warrant for the arrest of appellant.

The Bench Warrant was served and appellant was committed to the Clackamas County Jail, in Oregon City, Oregon, on April 23, 1985. On April 23, 1985, appellant was brought before the trial

court for arraignment. Appellant refused to enter aplea on the merits and notified the trial court of his intentions to plea to the jurisdiction of the court, for lack of personal jurisdiction. The trial court, over the objections of appellant, entered a plea of not guilty on behalf of appellant. The trial court then set the matter over to May 13, 1985.

By affirmation of appellant verified and filed in the trial court on May 10, 1985, appellant notified the trial court that the appearance to be made on May 13th would be a special appearance to contest the personal jurisdiction of the trial court. At page 2, lines 6 and 7 of this affirmation appellant notified the trial court of his intention to assert all limitations placed on governments state and federal, by the United States Constitution (1787). On page 2, lines 10 through 23 appellant notified the trial court that

his class of citizenship fell within purview of the Preamble of the United States Constitution and that his class of citizenship had no connection whatsoever to the 14th Amendment to the United States Constitution nor any of its counterparts in the Oregon Constitution. Appellant further asserted his right to refuse entry of a plea, and withdrew any plea entered on his behalf by the trial court.

To sustain appellant's right to claim protections afforded by the prohibitions of the United States Constitution appellant on May 10, 1985, also filed a request for judicial Notice of United States Citizenship with evidencing documentation, affidavit in support and memorandum of law, which showed that appellant is one contemplated by the words of the Preamble to the United States Constitution "our posterity". That is to say, one of those for whose protection the U.S. Constitution

was adopted. Appellant further supplied documents of recission of state and federal franchises to show that appellant was not one partaking of the benefits of the statutes appellant would claim and does claim are applied in a manner repugnant to the United States Constitution.

Appellant also requested the trial court, by pleadings filed on May 10, 1985, take judicial notice of the United States Constitution (1787), the Bill of Rights of the United States Constitution (1791), and the Oregon Constitution (1857). These motions were argued in the trial court on May 13, 1985.

The trial court (Judge Mills presiding) then entered its order taking judicial notice of all statutes and state and federal constitutions, and denying all other motions of appellant (App-1). So, although the trial court took notice of the state and federal constitutions, in refusing to

take notice of appellant's class of citizenship. By this ruling it was made clear that the appellant's future arguments claiming protections of the United States Constitution would be held unfounded, the trial court having in effect refused to recognize appellant as one capable of claiming those protections.

On August 7, 1985, appellant filed an "Affirmation of Demand to Be Heard by An Impartial Jury of Accused's Peers," alleging that the court must provide a jury of 12 good and lawful men, the peers of appellant, and that failure to do so would allow a final judgment without due process amounting to a Bill of Attainder prohibited by Article I, section 10 of the United States Constitution (p. 2 & 3). That is to say, any statute or group of state statutes which allowed a trial outside the conditions required to maintain the common law rights of appellant are

repugnant to the United States Constitution as a Bill of Attainder, in its lesser form a Bill of Pains and penalties.

Appellant again raised the issue that portions of the Oregon Motor Vehicle Code are a Bill of Attainder in its lesser form, in a Motion to Supress Information filed August 19, 1985. Appellant asserted that information obtained without probable cause, and given by appellant to the state, by way of the state's deception, and laws which support this kind of activity, are in final analysis laws which deprive appellant of rights without due process of the common law. These encroachments punish appellant by the deprivation of rights without the benefit of trial. The admissibility of such evidence on a trial is merely a continuation of the unlawful acts by which the evidence was obtained.

On October 17, 1985, appellant, by way

of a "Plea to the Jurisdiction of the District Court" questioned the jurisdiction exercised by the trial court. Appellant alleged that the flag purporting to be a United States flag in the courtroom, having yellow fringe on three of its borders, either represented an authorized foreign jurisdiction, or was present in the trial court in violation of Title 4 USC § 1.

If the flag represents a foreign jurisdiction, appellant, unless contracting to do so, cannot be required to answer accusations filed therein; and if the fringed flag does not represent a foreign jurisdiction, and is not authorized by the laws of the United States, then the state trial court has violated a law of the United States, and this violation caused confusion for the appellant. How is the appellant to determine the law under which the court does business when it flys a

flag unknown to the laws of the United States? On the hearing of October 25, 1985, this motion was heard and denied.

Trial was held over the objections of appellant before a statutory panel of six persons (persons as defined by ORS 174.100[4]) on October 30, 1985, and a verdict of guilty was returned by the purported "jury". The evidence appellant requested to be supressed was entered by plaintiff, the state of Oregon.

On November 14, 1985, appellant filed his notice of appeal in the Oregon Court of Appeals. Notice of Appeal was filed within the time allowed by Oregon Law.

Appellant requested an extension of time to file his opening brief on January 9, 1986, which was granted on January 21, 1986, extending the time for filing appellant's opening brief to February 7, 1986.

Appellant's opening brief was filed on February 7, 1986, assigned as error the

failure of the trial court to recognize appellant's class of citizenship as requested in appellant's Request for Judicial Notice of United States Citizenship. The opening brief also assigned as error the entry of evidence, by the state of Oregon, that appellant had moved to supress.

The Oregon Court of Appeals affirmed the judgment of the trial court by its order of June 25, 1986. No opinion was given by the Court of Appeals, official or unofficial (App-2).

Appellant filed his Petition for Review in the Supreme Court of Oregon on July 28, 1986, according to ORAP 10.05 alleging:

> "A Bill of Pains and Penalties is being enforced against defendant (former ORS 482.040[1][a]) while defendant is one capable of claiming protections from the prohibitions of Article I, section 10 of the United States Constitution. U.S. v Brown, 381 US 437 (1965); Cummings v. Missouri, 4 Wall (71 US) 277, 18 L.Ed 356 (1866)."

Appellant further claimed citizenship as known to the Preamble to the United States

Constitution as set forth in Dred Scott v. Sandford, 19 How (60 US) 393, 15 L.Ed 691 (1857).

The Oregon Court of Appeals considered the Petition for Review as a motion for reconsideration, and summarily denied the same by its order dated August 15, 1986 (App-3). The Oregon Court of Appeals again issued no opinion, whereupon the Supreme Court of Oregon considered the Petition for Review.

Thereafter, the Supreme Court of Oregon issued an order dated September 30, 1986, denying review of the case. The Supreme Court of Oregon also issued no opinion with its order (App-4).

Appellant petitioned the Oregon Supreme Court to reconsider its order denying review of the appeal. Appellant alleged that the licensing laws of Oregon, upon which the charges were predicated in the trial court, are repugnant to Article I,

section 10 of the United States Constitution, in that they deprive appellant of inherent and inalienable rights without benefit of trial. Appellant specifically related the provisions of ORS 153.535, former ORS 487.560 and former ORS 482.040. Appellant further contended that the state of Oregon has passed statutes conferring privileges which amounted to titles of nobility which are repugnant to the United States Constitution, Article I, section 10; the title of nobility is conferred, via a drivers license or statutory privilege, which gives rise to the title "Driver".

The Oregon Supreme Court refused reconsideration, without opinion, on November 4, 1986 (App-5).

On November 5, 1986, the Oregon Court of Appeals transmitted its judgment, affirming the trial court's judgment, to the trial court for entry upon the trial

court's records and execution of sentence (App-6).

On motion of appellant filed in the Oregon Court of Appeals on November 18, 1986, the Oregon Court of Appeals ordered the judgment recalled and action stayed pending this appeal by its order of November 21, 1986 (App-7).

WHY THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION

Wherefore, appellant having given notice of appeal to the Oregon Court of Appeals, and a copy thereof to the trial court (The Oregon State District Court for the County of Clackamas) herein moves this honorable court for the docketing of this appeal for the aformentioned cause.

Appellant reguests that the appeal be heard with briefs from the respective parties. The Oregon Motor Vehicle Code has many elements which, when acting in conjunction, violate diverse prohibitions of Article I, section 10 of the United States Constitution. To relate how the provisions of this complex code of administrative law has operated to the deprivation of appellant requires extensive discussion. Appellant feels that for this court to properly be appraised of the prevailing conditions of both law and fact related to

the instant appeal, full briefs will be impairative.

CONCLUSION

In the instant case the question of whether elements of the Oregon Motor Vehicle Code were repugnant to the prohibitions of the United States Constitution were present to the State Court. The judgment of the Oregon Court of Appeals affirming the trial court decision, although without opinion, upholds the validity of the state statute with respect to the prohibitions of the United States Constitution, and the Oregon Supceme Court's refusal to review the decision of the Oregon Court of Appeals in effect shows the Oregon Supreme Court's agreement with the decision of the Oregon Court of Appeals.

Thus, the decision of the highest court of the State of Oregon being final, and that decision being in favor of the validity of a state statute that is alleged to be repugnant to the consti-

tution of the United States, this appeal falls within the class of cases the United States Supreme Court is required to review on appeal, and is more properly considered a case arising under the constitution of the United States rather than under laws or treaties of the United States.

These foregoing provisions of the United States Constitution will no doubt play a significant part in invoking the appellate jurisdiction of this court as well as a part in review of the state court's decision on the merits.

Subscribed this 30th day of January, 1987.

BOYD R. BATY
Defendant-Appellant
In Propria Persona
19197 S. Molalla Ave. #161
Oregon City, OR 97045
(503) 653-5478